

# Notice of Allowability

## Application No.

10/040,778

## Examiner

Justin R Fischer

## Applicant(s)

MCEL RATH ET AL.

## Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4 May 2004.
2. ☒ The allowed claim(s) is/are 16-30 (renumbered 1-15).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |



## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Claims 16-30 (renumbered 1-15) are allowed. The following is an examiner's statement of reasons for allowance:

As acknowledged by applicant and evidenced by Costemmale and Gursky, it is well known in the tire industry to form a sidewall rubber component from a blend comprising an isoolefin, para-alkylstyrene, and bromoalkyl styrene. In particular, Gursky teaches a multiple layered sidewall in which the outermost sidewall layer is formed of the above noted composition- this is analogous to the tire construction of the claimed invention. However, in describing the composition, Gursky broadly suggests that para-alkylstyrene is included in an amount between 0.5 and 20 weight percent and bromine is included in an amount between 0 and 7.5 weight percent (majority in the form of bromo-alkylstyrene). It is further noted that a particularly preferred embodiment of Gursky includes between 5 and 10 weight percent para-alkylstyrene and between 1 and 2 weight percent bromo-alkylstyrene. A fair reading of Gursky does not teach, disclose, or suggest the specific combination of elements recited by the claimed invention. The quantitative relationship of the claimed invention specifically requires a para-alkylstyrene content between 9.5 and 20 weight percent and a bromo-alkylstyrene content that is inversely related to said alkylstyrene content. For example, a para-alkylstyrene content of 10 weight percent suggests a brominated content between 0.87 and 1.07 mole percent. This composition (and additional compositions defined by the quantitative relationship) is not consistent with the teachings of Gursky and as such,



one of ordinary skill in the art at the time of the invention would not have found it obvious to form the outer sidewall of Gursky with the specific composition of the claimed invention. It is additionally noted that while Costemalle hints at an inverse relationship between the respective components, none of the prior art compositions satisfy the specific quantitative relationship of the claimed invention. Furthermore, applicant has demonstrated that the composition of the claimed invention does in fact produce superior crack propagation resistance and ozone resistance (in relation to conventional compositions) while maintaining additional properties (e.g. tensile). Therefore, the prior references of record fail to teach, disclose, or suggest a multilayered sidewall construction in which the outer sidewall is formed of the claimed composition.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Justin Fischer

September 15, 2004

  
BLAINE COPENHEAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700